

**Ravalli County Planning Board
Meeting Minutes for October 4, 2006
7:00 p.m.
Commissioners Meeting Room, 215 S. 4th Street, Hamilton, Montana**

Public Hearing

Summerdale Orchards, Block 1, Lot 5A, AP (Bitterroot Ranch, LLC) Major Subdivision

*This is a summary of the meeting, not a verbatim transcript. A CD of the meeting
may be purchased from the Planning Department for \$5.00.*

1. Call to order

Dan called the meeting to order at 7:01 p.m.

2. Roll Call (See Attachment A, Roll Call Sheet)

(A) Members

Mary Lee Bailey (present)
Dale Brown (present)
Phil Connelly (present)
Ben Hillicoss (present)
Dan Huls (present)
Maura Murray (present)
Tori Nobles (present)
Chip Pigman (absent – excused)
Tom Ruffatto (present)
Les Rutledge (present)
Lori Schallenberger (absent – excused)

Park Board Representative: Bob Cron (present)

(B) Staff

Jennifer De Groot
Karen Hughes
John Lavey
Renee Van Hoven

3. Approval of Minutes

Dan asked if there were any corrections or additions to the minutes from September 20, 2006. There were none. The minutes were approved. He asked if there were any corrections or additions to the minutes from September 27, 2006. **Les** said he was confused about the Land Use Subcommittee's role in handling emergency zoning on Highway 93. **Renee** noted that in response to Ben's question, Karen answered that the Subcommittee is not supposed to do the zoning, but decide if the current situation is an emergency. The minutes were approved.

4. Amendments to the Agenda

There were none.

5. **Correspondence**

John noted that Staff received two public comments on the subdivision. One was from Kay Holloron McArthur. (See Attachment B, Letter from Kay Holloron McArthur dated September 26, 2006) The other was from Deborah Gardner. (See Attachment C, Letter from Deborah Gardner dated September 29, 2006)

6. **Disclosure of Possible/Perceived Conflicts**

There were none.

7. **Public Hearing**

(A) Summerdale Orchards Block 1, Lot 5A, AP (Bitterroot Ranch, LLC) Major Subdivision

- (i) Staff Report on the Subdivision Proposal: **John Lavey** gave a PowerPoint presentation. He gave an overview of the proposal and stated Staff recommended approval of the subdivision subject to 12 conditions in the Staff Report. He entered the Staff Report into the record. (See Attachment D, Summerdale Orchards Block 1, Lot 5A, AP Staff Report and Attachment E, Summerdale Orchards Block 1, Lot 5A, AP Revised Plat)

- (ii) Three Minute Rule Waiver Requests

There were none.

- (iii) Public Comment on the Subdivision Proposal and Variance Requests

(a) Persons in Favor

John Kellogg with PCI outlined the subdivision proposal. He said that the applicant is proposing a roadway to County standards ending in a cul-de-sac to the north of the "L." He noted that this is the second parcel subdivided in this area by Bitterroot Ranch, LLC. The first was a seven-lot subdivision of one to one-and-a-half-acre lots. He noted that the developer bought these two parcels and did a boundary line relocation that wrapped around a 3.5-acre parcel that included the original house and a pond. He commented that the subdivision to the south includes two-acre lots on the east side and between two to three-acre lots on the west side. He remarked that within the area, there is a density in concert with the development pattern in the area and the capability of roads and services to handle growth. He noted that each lot will have an individual well and septic system, but there are some well and septic easements. He noted that Lot 6 has a septic easement on Lot 5 because of its proximity to the pond. He explained that septic systems will be standard. He said that the well for Lot 3 is on Lot 8 and connected via an easement. He noted that the well for Lot 2 is shared because the original well was fairly prolific. He explained the irrigation system and noted that some soils are labeled severe because of shallow bedrock. He said that the roadway and some buildings will be adjacent to the bedrock, but he does not think it will be detrimental to the roads or houses. He said that the project received DEQ approval for the quantity of water. He said that when they did testing and drilled numerous wells, they found adequate water that will not adversely affect adjacent wells. He said that although the

property includes areas of statewide importance land, they are isolated so that profitable agricultural use is limited. He said that the applicant will pay pro-rata for Summerdale Road to Popham Lane to Eastside Highway. (See Attachment F, Declaration of Protective Covenants)

(b) Persons Opposed

Bob McArthur said he represents about 170 acres west of the proposed subdivision. He noted that the land is part of the old Holloron Ranch, which was in the family for 90 years. He noted that the first subdivision was done by the L&R Development Corporation, which subsequently changed its name to Bitterroot Ranch, LLC. He noted that the Planning Board unanimously turned down the previous subdivision, but the County Commissioners approved it. He said that the first subdivision has low-rate wells and the residents have to use cisterns to get adequate water. He noted that the developer drilled multiple wells because they could not find enough water. He noted that the flow rates are about 5 gpm. He said that he dug a well 300 feet deep but he does not have enough water to continually run a sprinkler. He noted that a clay-like bank deposit east and west of the project has been problematic for wells and septic. He voiced concerns about the developer placing two septic on one lot. He noted that when part of the ranch was sold, it was sold off at eight-acre minimums. He said that developers are subdividing off land piece-by-piece, which will lead to huge problems later. He said he was concerned with water, sewer, and traffic impacts. He doubted that there would be enough water for a garden. He asked the Board to research well flow rates in the area. He noted there is very little water in the earlier subdivision. He said that someone is trying to make money and pass this second subdivision off as the second phase of the first one. He said that if his well goes dry because of this subdivision approval, he will take legal avenues to justify the situation.

Michael McArthur said he owns some of the family ranch that his ancestors homesteaded 100 years ago. He noted a lack of water in the area. He said that Lot 6 will have two septic systems 45 feet from his property line. He noted that the law states that a septic has to be within 20 feet of the test hole, but a well cannot be put within 100 feet of a septic. He said that he will put in test holes against the fence line and will hold the County responsible if his water is affected. He said that two or three houses on the lot would have been fine, but this proposal is irresponsible growth.

Lee Erickson said he lives on Popham Lane. He said that 60 extra trips per day on the roads will cause problems and he can barely get across the road now. He asked the Board to address road issues. He said that it will be difficult to irrigate all the lots with a half-inch of water per acre received from the Holloron pipeline.

Barry Paulson said he and his wife own land in Kelly Auch's subdivision south of the proposal. He said that he depends on his well and questions the physical amount of water available. He said he was also concerned about blasting of exposed granite outcroppings for road construction along his property line.

Mandy McArthur said she grew up on a ranch in Beaverhead County. She said that the subdivision land is not prime agricultural land because of all the houses

going in. She said that recently, someone put an irrigation head on the mainline to steal water. She noted that dogs escape from yards and chase livestock. She said she was worried about kids throwing rocks at cows and other conflicts between agricultural and residential settings.

(c) Rebuttal

John Kellogg said that initially, the developer did not own these 15 acres. Originally, they owned the first subdivided parcel, but bought this after it became available. He noted that there are not prolific wells or water and the developer had to dig many wells to show the Environmental Health Department and DEQ that there was adequate water for the number of lots proposed. He noted that there were about three or four more lots proposed that were dropped due to water availability. He did not think that the wells in this subdivision will adversely affect nearby wells. He noted that the sewage treatment systems that will be installed are vastly better than older systems. He said that impacts to roads will be mitigated by paying pro-rata on Popham Lane. He said that notifications to the new homeowners and restrictions on dogs is important and will be managed by the homeowner's association.

(d) Close: Public Comment

(iv) Board Deliberation on the Subdivision Proposal

(a) Board Discussion and Questions

Tori asked if the developer monitored the neighbor's wells during well tests.

John Kellogg said that other wells on the property were monitored, but off-site locations were not.

Les said that Page 2 of the Water Availability Analysis Section of the application lists the wells, lots, and yield. He noted that it runs from dry to one lot with eight gpm. He asked if DEQ found that kind of production adequate.

John Kellogg said that DEQ did find it adequate for domestic use. He noted that this subdivision will use a combination of water sources to respond to the well production limitation. He said that the approval letter indicated reliance on the irrigation system for outdoor irrigation. He said that the developer will need to work with future owners on landscaping opportunities that do not use lots of water.

Mary Lee said she drove by the previous subdivision and said it looks like a desert. She voiced concerns about weeds and noted that there is not enough water for their lawns.

Tom said that DEQ issues approvals for how much water is acceptable for a house. He said that as a rancher and farmer, a half-inch of water does not go anywhere. He said that the Board cannot address wells, but can address weeds. He said that eventually people get tired of mowing weeds and let them grow. He said that it is a tough situation.

Ben said he thought the Board is responsible for addressing water issues. He said that DEQ has to provide technical expertise, information, and approvals, but part of the Board's responsibility is to look at water.

Tom said that people could go with a cistern if they have to. He noted that lack of water will be a tough selling point because today, people are used to having water when they turn on the tap.

Phil said that although DEQ looks at this subdivision, the Board is supposed to look at the entire water situation.

John Kellogg said that each lot has an adequate well for DEQ's evaluation, although they initially took multiple shots. He said that normally, they shoot for 5-8 gpm and that is generally adequate for domestic water. He said that if there is another water source for outside irrigation, they can drop below that goal. He noted that BRID has allocated about 13 irrigated acres to this property. He said that he could work with homeowners on xeriscaping. He said that he talked with a DEQ hydrologist this morning who said that they want to limit the use of domestic wells for outdoor irrigation.

Les asked how many people in the two neighboring developments had to put in cisterns and haul water.

Eric Hollingsworth said that he owns Lot 3 of the original subdivision and he has a cistern. He said that when Lori Schallenberger offered the lots, she said that they should get 12 gpm at 80 feet, but the water was not there. He noted that there were 19 holes in the ground.

Tori asked Pete Hooper for water comments.

Pete Hooper asked the definition of "adequate." He noted that he lives in Lot 4A and is not for or against the subdivision, but is concerned about water availability. He said that water pressure at his house is reduced when more than one shower is running concurrently.

Tori asked who will enforce water use. She said that although there will be covenants, one of the big problems in the County is lack of enforcement.

John Kellogg said that it would be important to Mr. Erickson and noted that Erickson is concerned about dealing with more than one person. He noted that the water will be handed by one person in the development.

Tom asked if a half-inch of water per acre is standard in the area.

Lee Erickson said that it is and usually it is enough for one spot. He said that if they spread it over seven lots, they will only get enough to spit on.

Les said there are serious water supply problems with the subdivision and he recommended getting outside help from an independent hydrologist. He recommended deferring until they receive more solid information about well water availability.

Phil asked if the test wells were done at same time or individually.

John Kellogg said it was over a period of a couple months. He said that the property has been previously irrigated from the allocated water and is surprised that it is now inadequate for lawns.

Dale said that he was not surprised and noted that there will have to be a rotation. He predicted that there will be a lot of fighting over water in this subdivision.

John Kellogg said there will be a rotation.

Ben said that these homeowners with two acres will want some horses, a garden, and some lawn, but they will not be able to do anything with their land. He said that in the spring the land will be green, but the rest of the year it will be dry. He said that this is the wrong place for a subdivision or the wrong size lots or the wrong use of the land for houses. He agreed with Les' concerns about being reluctant to approve the subdivision without clearer data.

Dan asked the pipeline size and the associated pressure.

Lee Erickson said it is a six or eight-inch pipeline and it has over 100 pounds of pressure.

Maura asked how the developer planned on working with homeowners on landscaping.

John Kellogg said that the developer can suggest types of landscaping that do not use as much water and provide that information at lot sale. He can also put together a primer on judicious use of water. He noted that the developer can make it specific to this site and make them aware of water problems.

Tori noted that Bob McArthur stated he is not against development and asked what he thought would be the best use of the land knowing that the developer has a vested interest in it.

Bob McArthur said he thinks that three lots would be sufficient and noted that he is not sure how they would have adequate water for that. He said that the developer wants to cram in houses for profit and out-of-staters want to exploit the property. He said that the new landowners will be fighting and taking more water.

The Board went through the Six Criteria for Subdivision Review. (See 7(A)(iv)(a)(1))

Les motioned to deny the subdivision based on the lack of evidence submitted for adequate water availability.

Mary Lee seconded the motion.

Ben proposed a finding that the subdivision could have a severe impact on agriculture and other houses in the subdivision.

Les said he would accept that and added that the subdivision should be denied based on the Board's findings and six criteria review results regarding significant impacts to agriculture, agricultural water-user facilities, the natural environment, and public health and safety.

Tom said that he agrees with Les and that a half-inch for that kind of ground will not go far once it is split. He noted that when construction starts, there will be dust problems and not enough water to kick down the dust.

Dale said that although the consultant mentioned that pro-rata will take care of road, it might not because the money collected can be used anywhere in the grader district.

Tori noted that the developer offered \$500 per lot to the school district, but explained that the Florence-Carlton School District has been asking for \$10,000 per lot. She suggested that developers offer a larger amount to the school districts for non-building related items. She explained that the Greater Ravalli Foundation gives \$100,000 to schools and none of that is for capital improvements.

Ben said that the Board has previously discussed trying to encourage the developer to negotiate an agreement with the school before coming to the hearing.

John Kellogg said that the developers have done that in the past. He said that the schools were pleased that they offered the amount they did.

Dale said that he read in the paper about two weeks ago that the Corvallis School District put in two mobile classrooms and they are overcrowded as it is.

(1) Review of the Subdivision Proposal against the Six Criteria

1. Effects on agriculture, including effects on the agricultural sector, loss of agricultural ground and effects on surrounding agricultural activities or practices.

All nine Board Members agreed the effects were significant.

2. Effects on Agricultural water-user facilities.

Eight Board Members agreed the effects were significant, one said they were non-significant.

3. Effects on local services, including public road system, police and fire protection, utilities, and public schools.

Four Board Members agreed the effects were significant; five said they were non-significant.

4. Effects on the natural environment, including ground water contamination, riparian/wetland areas, soil erosion, vegetation and air pollution, and noxious weeds.

Eight Board Members agreed the effects were significant; one agreed the effects were non-significant.

5. Effects on wildlife and wildlife habitat, including fisheries and mammals.

All nine Board Members agreed the effects were non-significant.

6. Effects on public health and safety, including sanitary issues such as sewage disposal and ground water contamination, police and fire protection, wildland fire hazard, traffic safety and the presence of other known hazards (onsite and offsite) such as high-pressure natural gas lines, airports, railroads, overhead power lines, industrial activities, mining activities, irrigation ditches and defined dam inundation areas.

All nine Board Members agreed the effects were significant.

(See Attachment G, Subdivision Six Criteria Review Sheet)

(2) Board Action

The vote was called; the members voted (9-0) to deny the Subdivision. (See Attachment H, Summerdale Orchards Block 1, Lot 5A, AP Vote Sheet)

8. Close Public Hearing

9. Communications from Staff

Karen said that she had a discussion today with the County Commissioners regarding regulation revisions not completed by the October 1 statutory deadline. She noted that the Planning Department faces a large workload and competing priorities. She said that the County Attorney's opinion is that missing the deadline creates risk. Their office suggested focusing on completing regulation revisions and not issuing a determination of completeness until the revisions are completed. There was discussion if some level of sufficiency could occur under the opinion, but noted that the issue was delayed for the moment. She noted that she is finishing a review draft of the regulations that will need Planning Staff and legal review. She said that the best case scenario would be four to six weeks, which includes a requirement for publishing legal ads to move forward with the hearing process. She noted that the County Commissioners seemed interested in holding a joint hearing on the regulations with the Planning Board so the Commissioners could hear the Board's comments and then make a decision. She explained that about 30 subdivisions in process have not received sufficiency determinations and they would be stalled until the regulations are revised. She noted that the County Attorney's Office has not determined if Subdivision Exemptions will be affected. She noted that halting the review process could create potential lawsuits from developers and another backlog when the process starts again. She noted that the County received an alternate legal opinion which said that applications and fees submitted prior to October 1 should be reviewed under the old regulations. She noted that the County Attorney's Office is considering that opinion. She explained that the County Commissioners decided that the Planning Department should follow the County Attorney's advice until they hold another meeting on the topic on October 10 at 2:00 p.m. She commented that long-range planning projects will be pushed aside for several weeks and Staff will plan for how to deal with the backlog. (See Attachment I, Memorandum from D. James McCubbin regarding revised

Subdivision Regulations, and Attachment J, Letter from John Tabaracci dated October 4, 2006, regarding SB 116)

Ben asked if there was a legal requirement to revise the regulations within one year after the Growth Policy was accepted.

Karen said she would need to review that language and noted it is not as clear cut as SB 116. She noted that the Growth Policy was originally adopted in December 2002. She noted that Staff is trying to put in obvious changes and make the criteria in the regulations comply with the Growth Policy although Staff is not going to do a thorough review at this time.

Ben asked if the County Commissioners have changed their position if this constitutes an emergency. He said he sent a memo stating that the County is in an emergency because we do not have enough staff or resources to meet requirements and because of zoning and subdivisions. He said that he has not heard an answer yet and the comments in the minutes reflected they did not feel it was an emergency and wanted more Planning Board input.

Karen said that the meeting focused on the US Highway 93 corridor emergency. She noted that today people acknowledged staffing and workload as problems and noted that there might be a procedural problem.

Ben proposed that the County is faced with an emergency due to the staff level of expertise and people leaving. He noted that Aspen Springs took a lot of Staff time. He said that there are serious issues that could be addressed and helped if they declared an emergency and implemented emergency zoning to stop some of the workload until there is a handle on the problem.

Mary Lee noted that the Department is so understaffed that people hired to do planning end up doing subdivision review and never get to plan. She concluded that there is an emergency and that we need more funds to help Staff. She noted that if Staff stops reviewing subdivisions, they will end up with a backlog.

Ben said he agrees. He noted that if the Department does not do anything or accept subdivisions, the County will be sued and lose. He said that then the County will have to rubberstamp them without review. He said that in order to avoid that, the County needs to declare an emergency and legally stop accepting subdivisions. He noted that State law gives them a year with a possible extension.

Karen said that the emergency would pertain to zoning, not a subdivision moratorium.

Phil asked what the emergency criteria are.

Ben said that six to eight months ago, George Corn wrote a memo and said there was an emergency.

Karen said there is a set of guidelines and she can provide the criteria and the George Corn memo.

Les noted that the Land Use Subcommittee is not able to proceed on its own without significant Staff input, which is draining Staff time as well. He said if we do not have an emergency situation, then Staff still has to continue with subdivision review. He stated that there is an emergency.

Dale asked if Karen or Renee get stressed.

Karen noted that Staff does not like to miss deadlines and takes things personally.

Dale concluded that there is an emergency.

Bob noted if no one took Staff time for awhile, that might alleviate the situation, but if they start an emergency situation, that will take Staff time as well. He asked what was the lesser of two evils.

Tori asked Karen what the best solution would be. She asked if borrowing people from other counties would help. She asked the best way to give Staff support.

Karen said that although there are roles where consultants are appropriate, both she and her predecessor believe that it is best to have local Staff involved in creating regulations. She noted that it is better because local Staff works with the regulations daily.

Tori asked about bringing in a couple people to do the basic legwork.

Karen said that she has been interacting with other counties, but she cannot think of another Planning Department with Staff to spare.

John Kellogg noted that Granite County hired a private consultant to pick up subdivision review.

Karen said that she has a good set of model regulations but she needs enough time to sit there and read and work through them. She noted that legal counsel also needs to do the review, because if something is wrong, they will need to defend us. She noted that Missoula County hired outside help, but it did not go smoothly and they ended up breaking apart the regulations into pieces.

John Kellogg commented that it is hard to bring someone else in who does not know the history or the County Attorney's interpretation of the regulations.

Karen noted that the County Commissioners might consider having a joint review of the proposed regulations with the Planning Board.

Ben said that the County Commissioners might do a hastier review than the Planning Board might want to do. He noted that after the draft is completed in about six weeks, there will still be a lot of work after that. He suggested that the Board put together a memorandum listing what they feel is an emergency and send it to the County Commissioners.

Karen said that if the Board chooses to do that, they should put it as an agenda item so public can comment. She suggested having a public forum.

Dan said he would first like to review George's memo and consult with George about the impacts.

Bob suggested that the Park Board and Land Use Subcommittee use less Staff time. He noted he was undecided about the best route.

Ben noted that in about a month, the County will vote if there is an emergency. He noted that they could wait and see what voters say or do something proactive. He noted he is in favor of taking a position as a Board.

The Board decided to have Staff pick dates and communicate via email about a special meeting to discuss if the County is in an emergency state.

Maura asked the benefit of having a meeting prior to the election.

Ben said that the Board would answer the County Commissioner's question. He noted that the County Commissioners can implement measures to have a moratorium.

Karen noted that she has spent time thinking about the role of the Planning Department and the Planning Board. She suggested addressing these questions and ideas as future agenda items: (A) What is the role of the Planning Board in relation to Planning? Is it for subdivision review or planning/zoning? (B) What are the ideas, needs, and/or priorities for planning? Could they have roundtable discussions with the development community to problem solve? (C) Possibly having public forums annually or more frequently. (D) Going on Board retreats to brainstorm what the Commissioners, Board, and Planning Department should be doing. (E) The Board is required by state law to create an annual report to any governing bodies concerning operation of the Board and planning within its jurisdiction. She suggested creating a work plan at the beginning of the year.

10. **Communications from Public**

There were none.

11. **Communications from the Board**

Ben said he came up with some meeting locations for the northern Land Use Subcommittee meetings. He said that the first one is tomorrow at 9 a.m. at the Dayspring Church Meeting Room. He noted that some of the meetings on Thursdays fell on holidays.

Maura asked if the Board should form some other subcommittees.

Karen said that the Land Use Subcommittee might consider splitting up and having one group take on the Highway 93 Corridor emergency and another group work on zoning.

Les asked if the Board could still work with Staff on subdivision regulation review.

Karen said that they could as soon as a staff review copy is available. She noted that she could not attend the Subcommittee meeting the following day. In response to a question by Phil, she explained that the annual report could probably be done at the beginning of the calendar year with the election of officers. She noted that the Board will have another public hearing about the Old Corvallis Road Area 3 Plan because there were potential legal glitches in the advertisement.

Ben asked when Board members should propose changes to the plan.

Karen said that he can do it during the meeting, but if wording needs to be revised and it requires more time, they can continue the hearing.

Ben noted that he wanted to change the height limits for high rises and noted that the plan limited maximum building height to three stories. He noted that many public comments were directed toward parks and open space, but there was nothing about specific requirements for open space.

Karen said that the County Commissioners will hold their own public hearing. If anyone has suggestions, Staff can take and forward those to John Horwich in advance.

12. New Business

There was none.

13. Old Business

There was none.

14. Next Regularly Scheduled Meeting: October 18, 2006 at 7:00 p.m.

- (A) Resolution to Adopt Old Corvallis Road Area 3 Neighborhood Plan as an Amendment to the Growth Policy

15. Adjournment

Dan adjourned the meeting at 8:58 p.m.